

MEMORANDUM

July 5, 2005

TO: THE LOS ANGELES COUNTY CLAIMS BOARD

FROM: DOUGLAS R. HART, Esq.
SHEPPARD, MULLIN, RICHTER & HAMPTON

DAVID B. KELSEY
Assistant County Counsel
Labor & Employment Services Division

RE: Arthur Ellerd v. County of Los Angeles
United States District Court Case No. CV-05 1211 and
Tammy Le v. County of Los Angeles
United States District Court Case No. CV-05 4200

DATE OF
INCIDENT:

AUTHORITY
REQUESTED: \$1,475,000.00

COUNTY
DEPARTMENT: Department of Community and Senior Services

CLAIMS BOARD ACTION:

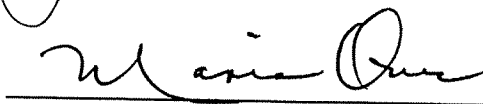
☐ Approve

☐ Disapprove

☒ Recommend to Board of
Supervisors for Approval


_____, Chief Administrative Office
ROCKY ARMFIELD


_____, County Counsel
JOHN F. KRATTLI


_____, Auditor-Controller
MARIA M. OMS

on July 18, 2005

SUMMARY

This is a recommendation to settle Arthur Ellerd v. County of Los Angeles, U.S.D.C. Case No. CV 05 1211, and Tammy Le v. County of Los Angeles, U.S.D.C. Case No. 05 4200, for a maximum total payment of one million four hundred seventy-five thousand dollars and no cents (\$1,475,000.00). The settlement, if approved by the Board of Supervisors, will be subject to Court approval.

The two cases are collective (class) actions brought pursuant to the Fair Labor Standards Act ("FLSA"). The Plaintiffs are current Department of Community and Senior Services Adult Protective Services Social Workers and Social Services Supervisors. The Plaintiffs brought their action on behalf of current and former workers. Currently, there are 128 Adult Protective Services Social Workers and 12 Social Services Supervisors. Plaintiffs allege that they worked for more than 40 hours per week but did not record this time on their time sheets. Accordingly, Plaintiffs contend that they are owed overtime compensation for the time over 40 hours per week that they claim they worked. Plaintiffs seek recovery for overtime incurred as of February 18, 2002. Plaintiffs also allege they are entitled to double damages. Additionally, Plaintiffs seek recovery of their costs of suit and their attorneys' fees.

LEGAL PRINCIPLES

Overtime Pay Liability. The FLSA requires that employers pay time and one-half overtime pay to employees who are covered by the Act and who work more than 40 hours per week.

County employees, including the Plaintiffs and class action participants in these actions, are normally scheduled to work 40 hours per week. Any additional hours worked, would exceed the FLSA 40 hour threshold requiring overtime pay.

Work performed by an employee that is not recorded on the employee's time sheet is commonly referred to as "off-the-clock work." An employer is not per se liable if an employee works off-the-clock. Rather, an employer is liable when it has actual or constructive knowledge of the performance of off-the-clock work. An employee bears the burden of establishing the employer's knowledge of off-the-clock work. An employer is considered to have constructive knowledge of off-the-clock work when there has been a pattern or practice of the employer's acquiescence to off-the-clock work.

Statute of Limitations: The maximum statute of limitations under the FLSA is three years. This lawsuit commenced on February 18, 2005.

Double Damages: Plaintiffs are usually awarded either prejudgment interest or double damages to compensate them for the loss of use of wages to which they were entitled. An employer will not be liable for double damages if it can prove that it acted in good faith and that it had reasonable grounds for believing that it was in compliance with the FLSA. The employer carries the burden of proving that double damages should not be awarded, and case law indicates that double damages are the norm, single damages the exception.

SUMMARY OF FACTS

The Plaintiffs and the class participants are current and former Adult Protective Services Social Workers and Social Services Supervisors. These workers are generally scheduled to work for 40 hours per week. They are compensated based upon the hours they record on their time sheets.

The Plaintiffs allege that the requirements of the job force them to work more than 40 hours per week. The Plaintiffs claim that they worked well in excess of 40 hours per week and did not record these hours on their time sheets. More specifically, Plaintiffs contend that they often worked as many as 60 hours per week but nonetheless only recorded 40 hours on their time sheet. Although the number of hours worked allegedly varies, Plaintiffs assert that most, if not all, class members regularly worked uncompensated overtime.

Plaintiff Arthur Ellerd alleges that his managers and supervisors know that he and the other social workers regularly work many overtime hours without compensation. Mr. Ellerd's managers and supervisors allegedly acknowledged the practice and indicated that they too worked uncompensated overtime hours when they were social workers. In addition, Mr. Ellerd has allegedly spoken with his supervisor after hours regarding work issues. Moreover, Mr. Ellerd contends that he sent numerous memoranda to the management of the Department of Community and Senior Services complaining about uncompensated overtime worked by Adult Protective Services social workers. Plaintiffs have therefore asserted that they would be able to demonstrate that the County had "constructive knowledge" of the uncompensated overtime allegedly worked by Adult Protective Services social workers.

Plaintiffs seek overtime wages for the period of time from February 18, 2002 to the present at a rate of time and one-half their hourly rate of pay. Additionally, Plaintiffs seek double damages, attorneys' fees, and costs.

DAMAGES

Plaintiffs will seek the following damages on behalf of all class members:

| | |
|-----------------------------------|---------------------------------|
| Time and one-half overtime pay: | \$ 12,000,000.00 |
| Double Damages: | \$ 12,000,000.00 |
| <u>Attorneys' Fees and costs:</u> | <u>\$ 750,000.00 (estimate)</u> |
| Total: | \$ 24,750,000.00 |

SETTLEMENT STRUCTURE

All current and former class members who worked at any time between February 18, 2002 and June 30, 2005 will be eligible to participate in the settlement. The maximum total payment will be one million four hundred seventy-five thousand dollars and no cents (\$1,475,000.00). This amount encompasses Plaintiffs' attorneys' fees and costs, settlement costs, payments to the two named plaintiffs and payments to those class members who elect to participate in the settlement. Any settlement amounts attributable to social workers who are eligible to participate in the settlement but choose not to do so will be retained by the County. (For example, an employee may decide to file an individual suit rather than participate in the settlement.) Accordingly, it is possible that the County's total payment under this settlement will ultimately be less than the maximum total payment amount of one million four hundred seventy-five thousand dollars and no cents (\$1,475,000.00).

SETTLEMENT PROCESS

If this settlement is approved by your Board, the parties will move the Court for preliminary approval of the settlement. If the Court grants preliminary approval of the settlement, the parties will send notice of settlement and claim forms to all current and former employees who fall within the class definition. Eligible current and former employees who submit a claim form will be entitled to receive a set portion of the settlement proceeds. The amount each employee will be eligible to receive will be calculated based upon the number of weeks the employee worked within the class period. Following the expiration of the time for the submission of claim forms, the Court will conduct a final approval hearing. If the Court approves the settlement, every eligible employee who submitted a claim form will be mailed a check.

However, for the County's protection, if more than 10% of current employees in the potential class or more than 30% of the total past and present employees who receive notice do not opt into the class, the County may void the settlement. This protects the County from the risk of funding the settlement and then facing additional exposure in the event significant numbers of employees do not opt in.

STATUS OF CASE

This case was filed in February 2005, and trial was set for July 11, 2005. On June 16, the parties reached a tentative settlement of this matter with the assistance of Mr. Charles G. Bakaly, a retired O'Melveny & Meyers' senior partner with 18 years mediation experience. The parties notified the Court that they reached a settlement that is conditional upon approval by the Los Angeles County Board of Supervisors. The Court vacated the trial date and set a status conference for August 29, 2005.

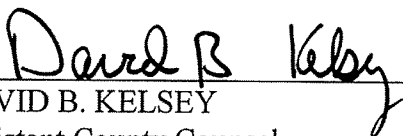
Expenses incurred by the County of Los Angeles in the defense of this case through June 30, 2005 are attorneys' fees of \$18,573.00 and \$688.60 in costs.

EVALUATION

Litigating this matter through trial poses a number of difficulties. First, this case potentially involves all current and former Adult Protective Services Social Workers and Social Services Supervisors employed since February 2002. Plaintiffs allege that they and the other class members regularly worked a substantial amount of uncompensated time. Additionally, Plaintiffs contend that the Department of Community and Senior Services' supervisors and managers had both actual and constructive knowledge of the fact that the social workers regularly worked overtime hours. Plaintiff Arthur Ellerd sent several memoranda that may be viewed as providing actual and/or constructive notice of the off-the-clock time worked by social workers. These factors present an uncertain potential for liability. However, given the possibility of high damage awards, double damages, as well as the extensive attorneys' fees and costs associated with litigating this matter through trial, the County's potential exposure is considerable.

Accordingly, we join the Department of Community and Senior Services, our private counsel, Sheppard, Mullin, Richter & Hampton and mediator Charles G. Bakaly, in recommending settlement of this action for a maximum total payment of one million four hundred seventy-five thousand dollars and no cents (\$1,475,000.00).

APPROVED:



DAVID B. KELSEY
Assistant County Counsel
Labor & Employment Services Division

DBK:mag

**COUNTY OF LOS ANGELES
COMMUNITY AND SENIOR CITIZENS**

CORRECTIVE ACTION PLAN

Cases: *Arthur Ellerd v. County of Los Angeles*, Case No. CV-05-1211
Tammy Le v. County of Los Angeles, Case No. CV-05-4200

Court: United States District Court, Central District of California

Incident: Alleged Failure to Pay Overtime Compensation for Hours
Worked Beyond 40 Hours/Week

Incident Date: Commencing February 18, 2002

Risk Issues:

An employer may be held liable for overtime compensation associated with "off-the-clock work" under the Federal Fair Labor Standards Act ("FLSA") if it has actual or constructive knowledge of the performance of such work.

Summary:

The two cases were filed under the FLSA by Community and Senior Services Adult Protective Services Social Workers on behalf of themselves and current and former social workers who claim that they are owed overtime compensation for hours worked in excess of 40 hours per week.

Corrective Action:

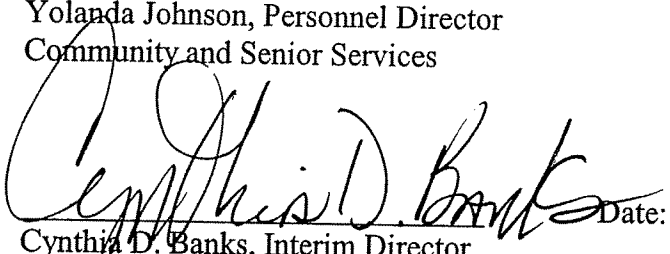
On June 22, 2005, a memo was issued to staff advising them in detail of the need to record all hours worked on their timecards. It also advises of the consequences for working non-emergent and overtime that has not been pre-approved. (Attachment I.)

Following are other measures that will be taken to ensure proper documentation of time, a mechanism for staff to report any Human Resource concerns related to reporting time, and to ensure proper monitoring of work hours by supervisors and managers:

- An "Employee Daily Log Sheet" has been created to assist with tracking total hours worked, which includes documenting the starting and stopping times. (Attachment II.) This will be reviewed every pay period by the supervisor and Human Services Administrator ("HSA") and/or Program Manager. Appropriate action against all parties will be taken for non-adherence to the 40-hour workweek without prior approval. The log sheets will be retained for a period of three (3) years by the supervisors.
- A "Human Resources Inquiry Form" ("HRI") has been created to be used outside of the normal grievance process to assist with any Human Resources related inquiries or concerns. (See Attachment III.) All HRI's are to be forwarded to the attention of the Personnel Officer. For those inquiries that are Employee Relation matters, employees are to mark the envelope "confidential". Acknowledgment of inquiries will be confirmed no later than one (1) business day, along with the approximate time necessary to resolve the matter. All measures will be taken to expedite the research and resolution of all inquiries.
- Training will be conducted on how to properly document time worked.
- A request for an updated "Caseload Study" for Social Workers is being submitted to the Department of Human Resources.
- A review of processes and procedures is underway to ensure efficiency.
- Interim Director has initiated a meeting of other County department heads whose departments employ social workers. The meeting will include a briefing by counsel of the requirements of the Fair Labor Standards Act and an discussion of lessons learned.

An anticipated timeframe for implementing various aspects of the corrective action is attached as Attachment IV.

Submitted: Yolanda Johnson, Personnel Director
Community and Senior Services

Approved: 
Cynthia D. Banks, Interim Director
Community and Senior Services

Date: 7-7-05

Attachment I



CYNTHIA D. BANKS
Interim Director

**COMMUNITY AND SENIOR SERVICES
OF LOS ANGELES COUNTY**

3175 WEST SIXTH STREET • LOS ANGELES, CA 90020-1708 • (213) 738-2600 (213) 385-3893 FAX


"To Enrich Lives Through Effective And Caring Service"

BOARD OF SUPERVISORS

GLORIA MOLINA
YVONNE B. BURKE
ZEV YAROSLAVSKY
DON KNABE
MICHAEL D. ANTONOVICH

June 22, 2005

To: All CSS Staff

From: Yolanda Johnson,  Personnel Officer
Human Resources Administration

Subject: **CHARGING ACTUAL HOURS WORKED TO PROGRAMS – FOR FLSA
COVERED EMPLOYEES**

Effective with your June 30, 2005, timecard and all future timecards, please adhere to the following procedures when recording your time on your timecard. All actual hours worked, including overtime, should be recorded as stated below:

Electronic Timecard

(Please note that if you work overtime, or an out-of-the norm flex schedule, you must change your "work schedule" to "TBD" on the electronic system.)

The following procedure applies to recording overtime hours worked:

- Indicate all actual hours worked under the "Hours Worked" section of the electronic timecard, coded by Program. First indicate, by program, all normal "regular hours" worked. Then list, by program, "overtime hours" worked consecutively.
- If overtime is worked, you must also indicate the **total** number of hours, coded by Program, of Compensatory or Paid overtime under the "Overtime Worked" section.

Please be reminded that all overtime must be previously approved according to procedures. You may not work, daily nor weekly, more than your regularly scheduled work hours (40 hours in a work week) unless you have received prior approval. Absent extraordinary circumstances (such as an emergency situation arises and your supervisor is not available), employees will be subject to discipline if they work more

than 40 hours per week without prior approval. It is also important to emphasize the Department's policy that the Department does compensate employees for any and all overtime worked according to Fair Labor Standards Act (FLSA) regulations. Therefore, if you work overtime, whether or not prior supervisory approval is granted, you must record such time on your timecard under the Hours Worked section. **All time worked must be accurately reflected on your timecard and at no time is it appropriate for you to work unrecorded overtime.**

Manual Timecard

The same rules apply as stated above for blue Manual Timecard. The only difference is the title of the fields. All total hours worked (including overtime) must be recorded, by Program, under the "Regular Hours Worked" section of the blue timecard and overtime worked should also be recorded under the "Overtime Worked" section.

Implementation

The above procedures for recording actual hours worked for program billing are to be applied to your June 30, 2005, timecard and all future timecards.

For clarification of your FLSA designation status, please refer to the *CSS Personnel Policies Employee Handbook, Section 5.03.06, Fair Labor Standards Act – Designation Status*.

If you have further questions, please contact me at (213) 738-3051.

YAJ

c: Interim Director
Assistant Directors

"To Enrich Lives Through Effective And Caring Service"



Pay Period: _____ Employee Name: _____ Empl. #: _____

[illegible]

Employee Signature: _____ Date: _____

Supervisor Signature: _____ Date: _____

HSA/Mgr. Review: _____ Date: _____

Note: Lunch time is not to be included in Total Hours Worked.



COUNTY OF LOS ANGELES
COMMUNITY AND SENIOR SERVICES
"To Enrich Lives Through Effective And Caring Service"



HUMAN RESOURCES INQUIRY FORM

INSTRUCTIONS:

Below, please complete the information pertaining to your Human Resources inquiry. You must provide specific information so that the problem may be researched thoroughly. Acknowledgement of your inquiry will be confirmed no later than one business day along with the approximate time necessary to resolve this matter. All measures will be taken to expedite this process and to keep you apprised of its status.

Date: _____

Type of Inquiry: ☐ Payroll ☐ Operations ☐ Exams ☐ Mileage ☐ Worker's Comp ☐ Employee Relations

Employee's Name: _____ (please print) Employee No: _____

Work Location: _____ Phone No: _____

Dates of Accrual in Question (if appl): _____

Have you previously spoken to someone in Human Resources pertaining to this matter?

☐ yes ☐ no

If yes, who? _____ Date: _____

Please specifically explain your inquiry:

*****FOR HUMAN RESOURCES USE ONLY*****

Unit Supervisor: _____

Date Rec'd: _____

HR Inquiry No. _____

Assigned To: _____

Date Resolved: _____

Date Notified Employee: _____

Resolution Notes:

Attachment IV

ANTICIPATED TIMEFRAME FOR IMPLEMENTING CORRECTIVE ACTION

- June 22, 2005: Reissuance of Departmental procedure for recording hours worked and requesting overtime approval in advance (Memo dated June 22, 2005 entitled, "Charging Actual Hours Worked to Programs - For FLSA Covered Employees.") (Attachment I)
- July 7, 2005: Meeting scheduled with Local 535 to advise of enforcement of June 22, 2005, procedure.
- July 12, 2005: Interim Director, CSS, scheduled to meet with other County department heads employing social workers. Meeting will include a briefing by Counsel of the requirements of the Fair Labor Standards Act and a discussion of lessons learned.
- Assistant Director, Aging and Adult Services, (AAS) scheduled to meet with Social Service Supervisors (SSS), Human Services Administrators (HAS), and APS Program Managers to review and discuss procedure including consequences of not adhering to established protocols.
- July 12 -29, 2005: HSAs meet with respective subordinate SSS, Social Workers, and Social Worker Trainees to review procedure and have employees sign acknowledgment and receipt of procedure. (Attachment III)
- July 14, 2005: Reiterate procedure and implementation/enforcement at monthly Caseload Meeting (Labor/Management Committee) with Local 535.
- July 16, 2005: Implement Daily Log Sheet to capture hours worked for use in verifying timecard accuracy. (Attachment II)
- August 1, 2005: Submit request to DHR to conduct an updated "Caseload Study" for Social Worker classifications
- August 3, 2005: Reiterate timecard reporting procedures at CSS monthly Human Resources Forum to ensure continued understanding of the importance of accurate timecard reporting.
- August 15, 2005: Implement semi-monthly verification of overtime requests and timecards and that timecards are coded accurately.
- September 1, 2005: Develop and include time reporting and overtime requests procedure for the newly hired Social Worker training curriculum.